

General Information Letter: The principles for determining when compensation is paid in this State for withholding purposes are the same as those for determining when compensation is paid in this State for payroll factor purposes.

November 30, 2000

Dear:

This is in response to your facsimile dated November 3, 2000 in which you state the following:

I am an employer from the State of Texas, and I had a question regarding our multi-state workers and your state tax. It was explained to me by the Tax Office in Springfield that if an employee does not take direction from the state they are working in, they are not subject to that state's tax. I am requesting a letter of ruling on the tax laws that apply to non-residents. Any additional information regarding multi-state workers working in Illinois for a short period of time would be appreciated.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

According to Section 302(a) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 *et seq.*), "[a]ll items of compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual who is a nonresident at the time of such payment and all items of deduction directly allocable thereto, shall be allocated to this State."

Section 1501(a)(3) of the IITA defines "compensation" as "wages, salaries, commissions and any other form of remuneration paid to employees for personal services." Furthermore, Section 304(a)(2)(B) describes when compensation is considered to be "paid in this State". Section 304(a)(2)(B) states the following:

- (B) Compensation is paid in this State if:
 - (i) The individual's service is performed entirely within this State;
 - (ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or
 - (iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

Under these provisions, compensation paid to a nonresident cannot be "paid in this State" unless at least some of the nonresident's services are performed within Illinois. If the information provided above leads you to believe that your employees are receiving "compensation paid in this State", Section 701(a) of the IITA would require you to withhold Illinois income taxes:

- (a) In General. Every employer maintaining an office or transacting business within this State and required under the provisions of the Internal Revenue Code to withhold a tax on:
 - (1) compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual[.]

Should you find that you are required to withhold Illinois income taxes, you have a legal obligation to file an Illinois income tax return for any year in which Illinois income taxes were withheld from your compensation.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax